

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1662 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

SAGARBHAI GANESHBHAI DESAI

Versus

PGJ NAMBUTHIRI

Appearance:

Mr.Anil S. Dave and Mr.Satish Patel for Mr. YN OZA for
Petitioner

Mr.L.R.Poojari, A.G.P. DS for Respondents

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 11/03/97

ORAL JUDGEMENT

By way of this petition under Article 226 of the Constitution of India the petitioner (brother of detenu - Sagarbhai Ganeshbhai Desai) has brought under challenge the detention order dated 12.2.1997 rendered by the respondent No.1 u/s. 3(1) of the Gujarat Prevention of Anti-social Activities Act, 1985 (Act No. 16 of 1985) (for short "the PASA Act").

2. The grounds on which the impugned order of detention has been passed appear at Annexure : C to the

petition. The grounds of detention inter-alia show four registered cases as particularised below :

CR No. U/s. Remarks Other facts

Sabarmati 324, 323, 114 Pending enlarged on bail
Police Station IPC r/w Sec. in on 31.7.96
CR 171/96 135(1) B.P.Act Court.

- do - 247/96 324, 506(2) - do - Enlarged on bail
IPC r/w.sec. on 9.12.1996
135(1) B.P.Act

Adalaj Police 147,148,149,323 - do - Arrested and
Stn.CR 220/96 506(2) I.P.C. enlarged on bail
r/w.Sec.135(1) on 9.12.96
of B.P.Act.

Sarkhej Police 354,506(2),504 Pending Enlarged on
Stn.CR 138/96 I.P.C. investi- anticipatory
gation bail on
11.12.96

The dates of incidents of the respective cases are 27.7.1996, 1.11.1996, 31.10.1996 and 3.11.1996. In the first case it is alleged that the petitioner had gone to the complainant's house for getting the same vacated and in the process caused hurt with sword and ran away after generating atmosphere of fear. In respect of the second case it has been alleged that the petitioner, with the aid of his associates, threatened the complainant by saying why he was keeping relations with the ex-sarpanch and assaulted him with the knife and sticks, causing hurt to the complainant and left the site by saying that the complainant had escaped on that day but he would not be left alive thereafter. The petitioner and his associates ran away by creating atmosphere of fear in this fashion. In respect of the third case it has been alleged that the petitioner and his associates had enmity in respect of a dispute arising on account of some land and with a common object in respect of such dispute formed unlawful assembly, threatened the complainant with life by administering abuses and also causing hurt to the complainant with an iron bar and ran away after creating feeling of insecurity in the area (in which the complainant was assaulted). In respect of the last incident it has been alleged that the petitioner in the company of his associates had gone to the house of the complainant and her husband with an intention to settle the transaction of their house, kidnapped the

complainant, administered threatening to the complainant of her life and committed an attempt to molest her and then the petitioner and his associates ran away.

3. It has been recited that the detenu's anti-social activity tends to obstruct maintenance of public order and in support of such conclusion statements of four witnesses have been relied. They speak about the incidents dated 5.1.1997 and 25.1.1997 indicating beating in public the concerned witnesses and creating atmosphere of fear amongst the people collected at the time of such incidents.

4. It is on the aforesaid incidents that the detaining authority has passed the impugned order of detention while also relying upon the aforesaid cases lodged against the detenu. The detenu has been stamped as a dangerous person within the meaning of Section 2(c) of the PASA Act.

5. The petitioner's case in respect of these registered case is that detenu has been falsely implicated therein and in so far as the last case is concerned the complainant lady had filed Affidavit stating that the detenu was never named by her and that while the detenu was passing through the place he in fact rendered assistance and saved her from the persons who had assaulted her and her husband.

6. In the back ground of the aforesaid facts alleged in the grounds of detention as also the facts alleged in the petition this matter was required to be taken up for final hearing pursuant to the order passed by this Court on 4.3.1997.

7. The petitioner has challenged the impugned order of detention on number of grounds, inter-alia, on the ground that the incidents and/or the cases against the detenu had taken place during the period from July, 1996 to November 1996 and the order of detention has been passed on 12.2.1997. The petitioner was even enlarged on bail latest by 11.12.1996 in so far as the last case is concerned as stated above, whereas he was enlarged on bail in all other cases earlier to that. It has, therefore, been the case of the petitioner that there is total absence of live link between the dates of incidents which formed the basis of impugned order of detention and the date on which the detention order has been passed. Thus, on account of vice of delay the subjective satisfaction arrived at by the detaining authority stood vitiated. In support of this submission reliance has

been placed on a decision of this Court rendered on 27.12.1996 (Coram : N.N.Mathur, J.) in Special Civil Application No. 8631 of 1996. After making a brief resume of the decision of the Apex Court this Court observed as under :

"This unexplained delay makes a ground of detention not proximate vitiating the order of detention itself."

This Court also observed that it would not be necessary to state the facts with respect to the unregistered cases. The Court, therefore, preferred to adopt the course adopted by the Supreme Court in the case of Jagan Nath Biswas V/s. The State of West Bengal reported in AIR 1975 SC 1516, Anand Prakash V/s. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth V/s. S. Ramamurthy reported in 1993 (2) Suppli. SCC 61. This Court, therefore, quashed the order of detention in that case.

8. It has however been submitted by Mr.L.R.Poojari, learned A.G.P. for the respondents that there is no delay in so far as the present case is concerned. It is no doubt true, he submits, the passage of time in between the dates of the registered cases and the date of the impugned order of detention is around three months and the passage of time in between the last date of bail order and the impugned order of detention is around two months. He, however, submits that the statements of the undisclosed witnesses were recorded soon before the date of the impugned order of detention. Hence, it could hardly be said that the live link between the offending activity of the detenu and the requirement of the detenu being preventively detained has been snapped. In support of his submission he has placed reliance upon a decision of the Honourable Court in the Case of Rajendrakumar Natvarlal Shah V/s. State of Gujarat & ors., reported in AIR 1988 SC 1255. He read Paragraphs : 9 & 10 before this Court. In fact the reading of the said paragraphs makes a distinction between the preventive detention under the law like conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and other preventive detention law. The Apex Court also pointed the distinction between the delay in making the order under law like Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and the delay in complying with the procedural safe-guards of Article 22(5) of the Constitution of India. The Court has further observed that no mechanical test by counting the months of the interval was sound. It all depends on the nature of the acts relied on grave and determined or

less serious and corrigible on the length of the gap, short or long, on the reason for the delay in taking preventive action like information of participation being available only in the course of an investigation and that the Court has to investigate whether the causal connection has been broken in the circumstances of each case.

9. The Affidavit filed on behalf of the respondents in this case clearly reveals that there is no explanation worth the name with regard to the delay in making the order of detention. On the contrary there is positive assertion in the following terms :

3.9 With reference to paragraph No. 4(vii) of the petition, I submit that there is no delay whatsoever between the alleged incidents and the date of actual order of detention. I submit that the impugned order has been passed by me as soon as I was satisfied that the petitioner detenu requires to be booked under the said Act.

3.10 With reference to paragraph No.4(viii) of the petition, I say and submit that the order of detention does not suffer from any delay.

It will be clear from what is stated by the deponent in the Affidavit in Reply that no explanation for delay worth the name has been forthcoming. The unregistered cases of usual nature could hardly have provided any material for bringing back the alleged live link between the offending activity as reflected by the registered cases and the date of detention. In my opinion the facts of the present case do reflect the absence of live link between the two as stated above. When there is a passage of considerable time between the alleged incident and the date of detention the Court can doubt the genuineness of the alleged "subjective satisfaction" of detaining authority as to the necessity of detaining the detenu with a view to preventing him from acting in any manner prejudicial to the maintenance of public order.

10. With regard to the unregistered incidents the Division Bench of this Court (Coram : S.M.Soni & S.D.Shah, JJ., per Soni, J.) in its decision dated 15.10.1993 in Special Criminal Application No. 1060 of 1993 observed ..."the statements of the persons are recorded on 22.11.1992, wherein they have referred to the incidents of 17.12.92, 27.11.92 and 22.11.92, but the

basis for holding the detenu as a dangerous person is the offence registered against him and, therefore, there is sufficient time-lag which has snapped the live link between the activity and the action taken against the detenu, which has affected the genuinness of the subjective satisfaction of the detaining authority."

11. In the result, in view of the peculiar facts and circumstances of the present case it has to be held that the impugned order of detention would stand vitiated on account of the unexplained delay as stated above.

12. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed on the ground of delay, it is not necessary to deal with the other grounds. Hence, following order is passed :

The impugned order of detention is hereby quashed and set aside. The detenu - prisoner Sagarbhai Ganeshbhai Desai shall be forthwith set at liberty if he is not required to be detained in any case. Rule made absolute accordingly.

* * * * *